IN THE

Supreme Court of the United States

No. 82-901

LEON W. KNIGHT, et al.,

Appellants,

v.

MINNESOTA COMMUNITY COLLEGE FACULTY ASSOCIATION, et al.,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT, DISTRICT OF MINNESOTA, FOURTH DIVISION

MOTION TO AFFIRM

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December 29, 1982

224-7631 — Becker Publishing Co., 227 E. 6th St., St. Paul, Minn. 55101 — 224-7631

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The Minnesota State Board for Community Colleges (MSBCC) moves pursuant to Rule 16 of the Rules of the Supreme Court of the United States that as to the issues raised in Appellant's Jurisdictional Statement[1] the final judgment of the district court be affirmed on the ground that it is manifest that the questions on which the decision of the cause depends are so unsubstantial as not to need further argument. Appellants seek by this appeal to persuade the Court to ignore or abandon its decision in *Abood v. Detroit Board of Education*, 431 U.S. 209 (1977) but present no reasons which would justify such a result.

[1] The MSBCC has also appealed to this Court from the district court's decision concerning the constitutionality of a section of the Minnesota Public Employment Labor Relations Act. The present motion to affirm is filed only as to the issues discussed herein which were raised by the appellants (plaintiffs below) in their Jurisdictional Statement.

STATEMENT OF THE CASE

This is a direct appeal from the findings and judgment by a district court of three judges constituted pursuant to 28 U.S.C. §§ 2281, 2284 sustaining the constitutionality of Minnesota's Public Employment Labor Relations Act (PELRA), Minn. Stat. § 179.61 *et seq.* (1980). Appendix to Jurisdictional Statement of Leon W. Knight, *et al.* (hereafter A.), p. 105.

The appellants are faculty members of various Minnesota community colleges all of which are under the jurisdiction of the MSBCC. PELRA establishes a system of collective bargaining in Minnesota between various public employers such as the MSBCC and their public employees. The employees are organized into bargaining units each of which is represented by an exclusive representative. The exclusive representative of the appellants' bargaining unit is the Minnesota Community College Faculty Association (MCCFA). The MCCFA is a private labor organization which is affiliated with the Minnesota Education Association (MEA) and the National Education Association (NEA) who were also defendants below. The appellants are members of the bargaining unit but are not members of the exclusive representative or any of its affiliated organizations.

Pursuant to PELRA, the MSBCC and the MCCFA have negotiated and have entered into a series of two-year contracts beginning in 1973 and continuing to the present. Such negotiated agreements under PELRA are subject to acceptance or rejection by the Minnesota Legislature. Minn. Stat. § 179.74, subd. 5 (1980). A. at 143.

For purposes of reaching an agreement as to the terms and conditions of employment, public employers under PELRA

are precluded from "meeting and negotiating" with anyone except the employees' exclusive representatives. Minn. Stat. § 179.66, subd. 2 and subd. 7 (1980). A. at 121-2.

Appellants brought this action in the United States District Court, District of Minnesota, Fourth Division, seeking damages and injunctive relief against enforcement of PELRA on the grounds that it violated appellants' First Amendment protections as well as the Fourteenth Amendment due process and equal protection clauses. Appellants contend that PELRA gives the MCCFA as exclusive representative legislative powers and deprives the appellants of similar power. They also argue that the MCCFA is, because of its affiliation with the MEA and NEA and due to its alleged activities, a political action organization indistinguishable from a political party and that appellants are unconstitutionally forced to accept the MCCFA as their representative.

The three judge district court unanimously rejected each of the appellants' contentions. After a trial lasting 41 days which produced 6000 pages of transcript and over 500 exhibits, the district court found that the exclusive representation and contract negotiation provisions of PELRA do not violate appellants' First and Fourteenth Amendment constitutional rights. The district court concluded that the MCCFA was not predominantly or significantly engaged in political activity and that its affiliations with the MEA and NEA did not constitute a single integrated organization. A. at 12-13. The district court also concluded that no constitutional violation arises as a result of the MCCFA's status as a private organization. A. at 9. Finally, the district court ruled that PELRA does not impermissibly delegate to the exclusive representative sovereign state power or power to make economic law. A. at 6.

ARGUMENT

I. THIS CASE IS CONTROLLED BY THE ABOOD DECISION.

The decision of the district court sustaining the constitutionality of PELRA is plainly correct. This Court's decision in *Abood v. Detroit Board of Education*, 431 U.S. 209 (1977), controls the issue of exclusive representation in public sector collective bargaining. The district court's decision is properly based on and controlled by the *Abood* decision. The appellants attempt to emasculate *Abood*. They have produced an extraordinarily voluminous record which they ask this Court to examine in hope that they can unearth some evidence that would present a different case than *Abood*. In this regard, the appellants' efforts are wasted.

The facts in this case are strikingly similar to the facts in *Abood*. In both cases there are statutorily imposed systems of public sector collective bargaining which establish exclusive representatives for employee bargaining units. In both *Abood* and in the present case, the exclusive representatives are private employee organizations selected by the members of the bargaining unit and not subject to the employer's control. In both cases the teachers' exclusive representatives are accused of being politically active. The appellants in each case are members of the bargaining unit but not members of the exclusive representative. The duties of the exclusive representatives are the same in both cases, i.e., negotiating and administering a collective bargaining agreement. In every critical matter, this case parallels *Abood*. The issues raised by appellants were decided by *Abood*. To note probable jurisdiction for this case would only serve to decide again those matters already decided in *Abood*.

A. The Constitutional Issues Involving Public Sector Collective Bargaining Were Reached In Abood.

The appellants have taken the position that *Abood* did not actually decide whether a collective bargaining system utilizing private exclusive representation for public employees was constitutional. The district court considered and properly rejected this argument. A. at 7.[2] *Abood* holds that public sector collective bargaining wherein public employees are exclusively represented by a private labor organization is not violative of the First and Fourteenth Amendments to the United States Constitution. In reaching this decision, this Court spent considerable time discussing the impact of the very factors which appellants claim remain undecided.

B. The Public Nature Of The Employees Was Considered In Abood.

The difference between public and private sector collective bargaining as it impacts the First and Fourteenth Amendments was central to this Court's decision. *Id.* at 225-233. It concluded that:

> The differences between public- and private-sector collective bargaining simply do not translate into differences in First Amendment rights.

Id. at 232. There can be no doubt that the Court thoroughly considered and resolved the question of whether the *public*

[2] The concurring opinion of Justice Powell in Abood disputes the appellants' narrow view of that case and recognizes that "the Court's holding and judgment [remand for further proceedings] are but a small part of today's decision." *Id.* at 245-6.

nature of the employer and employee affected the constitutionality of collective bargaining:

> The very real differences between exclusive-agent collective bargaining in the public and private sectors are not such as to work any greater infringement on the First Amendment interests of public employees.

Id. at 231.

C. The Exclusivity Factor Was Considered In Abood.

Another objection to Minnesota's PELRA that appellants raise is the exclusivity factor insofar as it provides the employees' exclusive representative with greater influence in governmental decision-making than the appellants have. This objection was anticipated and resolved in *Abood*:

> It is surely arguable, however, that permitting public employees to unionize and a union to bargain as their exclusive representative gives the employees more influence in the decision-making process than is possessed by employees similarly organized in the private sector.

Id. at 229-30. Regardless of this possibility, the Court did not invalidate the principle of exclusivity in public sector labor relations presented in *Abood* which appellants so vigorously attack. Exclusive representation was an important part of the Michigan law considered in *Abood* and in the private sector labor cases,[3] on which this Court relied. Its presence in Minnesota's PELRA underscores the applicability of *Abood* to the present case.

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[3] Railway Employees' Dept. v. Hanson, 351 U.S. 225, 76 S. Ct. 714 (1956) and Machinists v. Street, 367 U.S. 740, 81 S. Ct. 1784 (1961).

D. The Lack Of Vitality Of The Schechter And Carter Coal Cases Was Determined In Abood.

Appellants allege that *Carter v. Carter Coal Co.*, 298 U.S. 238 (1936) and *A.L.A. Schechter Poultry Corp. v. United States*, 295 U.S. 495 (1935) preclude the alleged delegation by the State of Minnesota of its sovereign power. The district court rejected the appellants' allegations of a delegation of authority by the State on factual and legal grounds and further recognized that the continued viability of these two cases "was doubtful at best." A. at 6. It is readily apparent that the appellants seek probable jurisdiction in an attempt to persuade this Court to reverse its abandonment of the *Schechter* and *Carter Coal* non-delegation holdings. This Court could have accomplished this in *Abood* if it was so inclined. Instead, *Abood* decision confirmed the non-applicability of *Schechter* and *Carter Coal*. Contrary to the appellants' arguments, the issues they raise have been finally resolved and are not substantial federal questions.

II. THE RECORD DOES NOT CONTAIN ANY EVIDENCE THAT APPELLANTS' EXCLUSIVE REPRESENTATIVE IS SUBSTANTIALLY INVOLVED IN POLITICAL ACTIVITIES OTHER THAN THAT WHICH RELATES TO COLLECTIVE BARGAINING.

As a final argument, appellants contend that their exclusive representative, MCCFA, is so closely affiliated with the MEA, NEA, the Independent Minnesota Political Action Committee for Education (IMPACE) and the National Education Association Political Action Committee (NEA-PAC) so as to constitute a single integrated organization. They

further contend that this alleged integrated organization is by its nature a political action organization which as a result of the decision in *Branti v. Finkel*, 445 U.S. 507 (1980) should therefore be constitutionally disqualified from serving as the appellants' exclusive representative.

This Court has already addressed the question of political activities of the exclusive representative in *Abood* and has established that nonmembers cannot be forced to contribute to noncollective bargaining political activities. Nothing in the present case contradicts this determination.[4]

At the trial below, appellants presented hundreds of exhibits and numerous witnesses in an attempt to prove the integr tion and political action allegations against the exclusive representative and its affiliated organizations. The three-judge district court panel which exhaustively reviewed the lengthy record concluded that the appellants had totally failed to prove their allegations. A. at 11-13, 41-44. On the question of whether the MCCFA and its affiliated organizations constitute a single, indivisible entity, the district court concluded that no such integration in fact exists. A. at 12. On the question of whether the MCCFA and its affiliated labor organizations are so deeply involved in political activ-

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[4] The district court noted in its decision:

> We emphasize that the plaintiffs [appellants] do not advance a narrow claim that some part of their fair share fees are misused for political activity unrelated to collective bargaining. Calculation of the fair share fee is not in dispute here and we note that there is a statutory procedure [Minn. Stat. § 179.65, subd. 2 (1980)] for resolving any such dispute.

A. at 10. This procedure was recently challenged and has been found not to be constitutionally infirm. Threlkeld v. Robbinsdale Federation of Teachers, Local 872 AFL-CIO, 316 N.W.2d 551 (Minn. 1982), *appeal dismissed*, —— U.S. ——, 103 S. Ct. 24 (1982).

ities as to constitute a political action organization, the district court concluded that that allegation "is flatly contradicted by the record." A. at 13. The labor organizations showed to the district court's satisfaction that their political activities relate almost exclusively to collective bargaining. A. at 11-12. No substantial question is presented by the appellants.

The district court of three judges has closely examined this record. If probable jurisdiction is granted, the three judge district court must be reversed not only on its legal decision but also on its findings of fact if the appellants are to prevail. The issues raised in this appeal are not substantial and certainly do not qualify for the extensive effort demanded by the appellants.

CONCLUSION

MSBBC respectfully submits that the appellants have failed to present a substantial question and that the judgment of the district court which is the subject of the appellants' Jurisdictional Statement should be affirmed as to the points raised there.

Dated: December 29, 1982.

Respectfully submitted,

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